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| DOCKET NO. HHD-CV-16-6067238-S | : | SUPERIOR COURT |
| GEORGE SOUCIE,<br>A CT. STATE MARSHAL | : | JUDICIAL DISTRICT<br>OF HARTFORD |
| VS. | : | |
| HARTFORD PARKING AUTHORITY | : | DECEMBER 9, 2016 |

MEMORANDUM OF DECISION

The petitioner, George Soucie, a Connecticut state marshal, appeals an assessment for a parking citation issued by the respondent Hartford Parking Authority, which cited him for parking in a no-parking zone. He contested the citation, claiming to be exempt from the application of Hartford's parking laws by virtue of General Statutes § 14-290 (a). The Hartford citation hearing office rejected his argument, holding that "CT 14-190 does not apply to illegal parking spaces (i.e. tow zones, fire hydrants, handicapped spaces) absent very specific evidence that such parking was in fact necessary." The respondent argues, in effect, that only extreme circumstances can justify parking in illegal spaces. For the reasons stated below, the court concludes that § 14-290 (a) exempts a marshal from parking regulations when his otherwise illegal action is reasonably necessary for the performance of his official duties. He is not required to prove that an emergency existed, but he must provide evidence of the circumstances that made it necessary for him to park illegally. The court further concludes that the petitioner in that case failed to meet that burden of proof.

cc: Edward S. Noble III, Esq (P)
Hartford Corporation Counsel (D)
Rptr. Judicial Decisions
12/9/16 elk

General Statutes § 7-152b (g) provides that a person aggrieved by a municipal parking assessment may obtain judicial review by filing an appeal in accordance with the rules of Superior Court. Practice Book § 23-51 allows aggrieved persons to file a petition to open the assessment with the clerk of the court, after which a hearing de novo is held. In this case, the court held such a hearing on July 26, 2016, and received briefs from the petitioner and the respondent on August 11 and August 23, 2016, respectively.

Section 7-152b (g) and Practice Book § 23-51 provide scant guidance for the proper conduct of a hearing de novo and do not specify a burden of proof to be assigned. In *Flahive* v. *Mansfield*, Superior Court, judicial district of Tolland, docket number CV-12-5005633S (July 10, 2012, *Sferrazza, S. J.*), the trial court construed a similar statute, General Statutes § 7-152c (g), in light of Practice Book § 23-51, and determined that a "de novo" hearing requires the court to conduct a proceeding that parallels that of the earlier nonjudicial hearing. The *Flahive* court therefore assigned the burden of proof of a violation of a local ordinance on the municipality because it was the party seeking to enforce its ordinances and assess a civil penalty. The court concluded that the standard of proof was a preponderance of the evidence because a civil penalty was being sought.

This court finds the analysis in *Flahive* to be persuasive as far as it goes. That is, the respondent bears the burden of proving, by a fair preponderance of the evidence, that the petitioner's vehicle was parked in a no-parking zone in violation of a parking ordinance. That

fact, however, is undisputed; what is at issue in this case is whether the petitioner was exempt from the provisions of the parking ordinance because he was performing official duties as a state marshal at the time. The burden of proving an exemption from a statutory provision ordinarily lies on the party asserting the exemption. See, e.g., *H.O.R.S.E. of Connecticut, Inc.* v. *Washington*, 258 Conn. 553, 560, 783 A.2d 993 (2001) (burden of proving tax exemption rests on party asserting it); *Rocque* v. *Freedom of Information Commission*, 255 Conn. 651, 661, 774 A.2d 957 (2001) (burden of proving exemption under Freedom of Information Act rests on claimant). The court concludes that the petitioner bears the burden of proving his entitlement to the exemption in this case.

Based on the credible evidence presented, the court finds the following facts. On February 4, 2016, the petitioner was a state marshal assigned to attend court to pick up restraining orders for service. He was required to be at the court between 12:30 and 1:00 p.m. and between 4:30 and 5 p.m., but he was also subject to being called in at other times if a restraining order had been issued and service was needed. Restraining orders must be served, in the petitioner's testimony, "immediately." At the hearing in July, he could not recall whether he was attending court on February 4 to pick up a restraining order based on a call from the court clerk or in preparation for his scheduled duty from 4:30 to 5 p.m. He testified that he did look for parking on Lafayette Street,[1] approximately a block from the court at 90

[1] The respondent presented evidence that between 3 p.m. and 4 p.m., fifteen parking spaces became vacant on Lafayette Street. The evidence was based on a report from an

Washington Street, but he did not drive down other nearby streets to look for parking. When he parked, he was not going to court to take someone into custody, and he was not under a threat of physical danger. He believed that he was allowed to park in no-parking zones whenever he was performing his duties as a marshal.

The petitioner parked his vehicle in front of the civil courthouse at 95 Washington Street, across the street from the state police barracks and the courthouse for family matters at 90 Washington Street. He "split the sign," parking partially in a "no standing" space reserved for emergency vehicles and partially in a legal but time-restricted space. Parking is not permitted in that space between 3:30 p.m. and 6 p.m. to ease the congestion resulting from commuter traffic. The petitioner's vehicle was ticketed at 3:47 p.m. for a violation of General Statutes § 14-307 (c), which in relevant part forbids parking "in any place where parking is prohibited or . . . for a longer period than that indicated as lawful by any sign erected and maintained" by any municipality.

The petitioner contends that General Statutes § 14-290 (a) allows him to park without regard to parking regulations whenever he is performing his duties as a marshal. The respondent contends that § 14-290 (a) exempts marshals only in emergencies, such as when

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experimental set of parking meters with sensors that could detect the departure of vehicles. This evidence, however, does not establish that parking places were vacant when the petitioner looked on Lafayette Street. There is no evidence as to the time that the petitioner parked; it could have been earlier than 3 p.m. Similarly, there is no evidence as to the specific times between 3 p.m. and 4 p.m. when individual vehicles exited the parking spaces.

they are taking someone into custody or have reason to fear for their physical safety. To resolve this dispute, the court must construe § 14-290 (a) by considering its text and its relationship to other statutes. See General Statutes § 1-2z. If, after such consideration, its meaning is plain, the court must determine how the statute applies to the facts found.

Section 14-290 (a) provides as follows: "Motor vehicles in the custody and use of officers in the performance of their duties shall be exempt from any traffic regulations of any town, city or borough, and from the provisions of this chapter and of chapter 246, so far as such exemption is necessary for the effective enforcement of any of the provisions of the statutes." "Officer," for purposes of § 14-290 (a), is defined in relevant part to include "any constable, state marshal, inspector of motor vehicles, state policeman or other official authorized to make arrests or to serve process." General Statutes § 14-1 (61); see also General Statutes § 14-212.

Section 14-290 is found in chapter 248 of the general statutes. Chapter 248 governs the operation of motor vehicles. It includes statutes that prohibit, among other things, traveling unreasonably fast and exceeding posted speed limits (§ 14-218a), speeding (§ 14-219), reckless driving (§ 14-222), and following another vehicle too closely (§ 14-240). It also includes a more specific statute prescribing the rights and duties of operators of emergency vehicles (§ 14-283).

Considering the plain language of § 14-290 (a) and its context within the motor

vehicle statutes, the court concludes that neither the petitioner's nor the respondent's view of § 14-290 (a) is correct. The text of the statute itself refutes the petitioner's claim. If the legislature had intended to exempt officers from parking regulations and motor vehicle regulations *whenever* they are performing their duties, it could easily have done so simply by omitting the clause "so far as such exemption is necessary for the effective enforcement of any of the provisions of the statutes." It chose instead to qualify the exemption as stated. The exemption is not unconditional.

Whether the legislature intended to limit the exemption to emergency situations, as the parking authority in effect contends, requires consideration of § 14-290 (a) in relation to other exemption provisions, including § 14-290 (b) and § 14-283. Section 14-290 (b) exempts operators of governmental maintenance equipment from compliance with specific traffic and parking statutes,[2] but only "so far as such exemption is necessary." In *Pickles* v. *Goldberg*, 38 Conn. App. 322, 660 A.2d 374 (1995), the Appellate Court rejected a claim of exemption under § 14-290 (b) and upheld the suspension of an operator's license following a fatal accident. The operator, an employee of the state department of transportation, had driven a

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[2] General Statutes § 14-190 (b) provides in relevant part: "The following provisions of the general statutes shall not apply to operators of maintenance vehicles or equipment of any governmental agency or agent thereof or to vehicles or equipment of any governmental agency or agent thereof, so far as such exemption is necessary, while such operators and equipment are engaged in or are preparing to engage in or are departing from highway maintenance operations on any highway, road or street . . . : Sections 14-216, 14-230 to 14-233, inclusive, 14-235 to 14-242, inclusive, 14-244 to 14-247, inclusive, 14-250a to 14-252, inclusive, 14-261, 14-262, 14-264 to 14-271, inclusive, 14-299, 14-301 to 14-308, inclusive."

dump truck down a highway exit ramp that was marked "No Trucks." At the end of the ramp, the operator lost control of the vehicle. It overturned onto a car that was stopped at a traffic light, killing the driver. Following a hearing, the commissioner of motor vehicles suspended the operator's license for eighteen months. The operator appealed the suspension to the trial court, which sustained her appeal, finding that she was exempt from the exit ramp control signs. The Appellate Court reversed. Observing that § 14-290 (b) exempts maintenance operators from specified statutes "so far as such exemption is necessary," the Appellate Court concluded that the hearing officer reasonably could have found that use of the prohibited exit ramp was not necessary because nonrestricted exit ramps were available. Id., 328. The Appellate Court's decision establishes that necessity, rather than convenience, is required to justify reliance on the exemption in § 14-290 (b).[3]

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[3] The petitioner does not address the Appellate Court's decision in *Pickles*. He cites *Allison* v. *Manetta*, 284 Conn. 389, 403-04, 933 A.2d 1197 (2007), and *Locoh* v. *New Haven*, Superior Court, judicial district of New Haven, docket number CV-04-0486950S (November 2, 2004, *Zoarksi, J.T.R.*), in support of a claim that the exemptions in § 14-290 are "absolute." Both *Allison* and *Locoh* were personal injury cases that involved the application of § 14-290 (b) to highway maintenance workers who were performing their duties when an accident occurred. In *Allison*, the Supreme Court held that a truck driver who parked on a state roadway to perform maintenance duties could be free from criminal liability for a traffic violation because of the exemption in § 14-290 (b) but still be liable in a civil action for damages if he failed to exercise due care in the way he parked the vehicle. In *Locoh*, a municipal snow plow operator finished plowing an intersection and backed up but left a portion of the plow blade intruding into the intersection. The plaintiff entered the intersection without observing the snow plow, which was not moving but had its lights on. The plaintiff struck the plow blade and sued the city. Without deciding whether the plaintiff or the plow driver had the green light, the trial court observed that § 14-290 (b) exempted a snow plow operator engaged in plowing snow from obeying traffic signals. It decided the case in favor of

On the other hand, § 14-290 (a) does not limit the exemption to emergencies. Indeed, a separate section, § 14-283, governs the use of "emergency vehicles," which it defines to include ambulances, other vehicles operated by emergency medical services, fire vehicles, state and local police vehicles, and vehicles operated by Department of Motor Vehicles inspectors or Department of Correction personnel – but only when such vehicles are actively engaged in responding to an emergency. Section 14-283 exempts operators of emergency vehicles, as so defined, from prohibitions on parking, standing, running red lights and stop signs, and exceeding posted speed limits, but it imposes specific limits on those exemptions. The exemptions apply only when an emergency vehicle is using audible warning signals and visible flashing lights. General Statutes § 14-283 (c). The exemptions do not relieve the operator from the duty to drive with due regard for the safety of all persons and property. General Statutes § 14-283 (d). The detailed provisions of § 14-283 indicate that when the legislature intends to address issues of emergency, it does so expressly and with particularity.

These various traffic statutes reflect a legislative balancing of public needs. Traffic regulation is obviously vital to public safety. Conversely, some exceptions to such regulations – such as those for ambulances and fire trucks – are equally vital to public safety. Some parking regulations, such as those prohibiting parking near fire hydrants or in zones

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the defendant, however, because the plaintiff's negligence in driving too fast for conditions and failing to keep a proper lookout exceeded any negligence of the defendant. Neither *Allison* nor *Locoh* discusses the meaning of "so far as necessary" in § 14-290 (b), and neither is dispositive of the question presented here.

designated for emergency vehicles, also protect public safety. Vehicles parked in a tow zone during rush hour may impede orderly traffic flow and create safety hazards for other vehicles attempting to navigate crowded streets.

Section 14-290 (a) exempts "officers" from traffic regulations "so far as necessary for effective enforcement" of the statutes. Officers, as stated above, include marshals and other process servers. Whether it is necessary for a process server to be exempt from parking regulations depends on the circumstances. The petitioner in this case testified that restraining orders must be served "immediately." Indeed, General Statutes § 6-38b (f) requires the state marshal commission to ensure that restraining orders are served "expeditiously." It further provides that the failure of any state marshal to accept a restraining order for service or to fail to serve it "expeditiously" without good cause shall be grounds for convening a hearing for removal of the marshal.

Application of § 14-290 (a) to the facts of this case leads to the conclusion that a marshal is exempt from parking regulations when it is reasonably necessary to effect "expeditious" service of process. If, for instance, a marshal assigned to courthouse duty at 4:30 p.m. cannot find a legal parking space after a reasonable search for it, and further delay would impair his ability to meet his obligation to accept and serve restraining orders expeditiously, he may park in a no-parking zone. Similarly, if he is called to pick up a restraining order at a time other than his regular duty and he is unable to find a legal parking

space after a reasonable effort to do so, he may park in a no-parking zone if necessary to retrieve the restraining order expeditiously. What other situations may warrant parking in a no-parking zone must be decided on the facts of each case.

In other words, officers may violate parking laws when it is reasonably *necessary* – not merely convenient – for them to do so. This means, of course, that they may receive parking citations if the necessity is not apparent to parking enforcement authorities, and they may be required to appear for a hearing to prove the factual basis for the exemption.

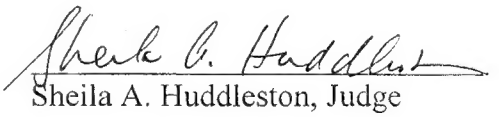
The petitioner argues that any construction of the statute that requires an officer to prove the necessity of his illegal parking will force officers to go to court every time they park, wasting their time and interfering with their actual job of making arrests or serving process. The court disagrees. Officers will be required to prove the necessity of their actions only when they park *illegally* and receive a citation for it. It may often be the case that legal parking is available if they look for it. In other cases, the necessity may be apparent, and in such cases the parking authority may voluntarily refrain from issuing a citation.

The remaining question, then, is whether the petitioner in this case met the burden of proving, by a fair preponderance of the evidence, that he was entitled to the exemption in § 14-290 (a) on February 4 because it was reasonably necessary for him to park in a no-parking zone and a tow zone in order to retrieve restraining orders. The court finds that he did not. The petitioner did not testify as to the exact time when he parked in the no-parking

zone. He could not remember whether he had been called in to pick up a restraining order or whether he was there for his regularly assigned time of 4:30 p.m. He testified that, after he was paid by the state, he did not retain any records that would help him remember what process he accepted or served that day. If he was there only for his 4:30 duty, and he was illegally parked at 3:47 p.m., he reasonably could have spent more time looking for a legal space.

Because parking regulations, like traffic regulations, have public safety implications, those who claim exemption from such regulations must have a good reason for doing so. If an officer receives a parking citation when he believes it was reasonably necessary for him to park where he did, it is not too much to ask him to make a note of, or keep records relating to, that reason so that he can explain it in an appeal from the citation. Here the petitioner candidly testified that he regularly parked in a tow zone because it was his understanding that he could park there whenever he was working as a state marshal. Because he did not testify as to any facts demonstrating that it was reasonably necessary for him to do so on the day at issue, his petition is denied.

BY THE COURT,



Sheila A. Huddleston, Judge

# CHECKLIST FOR CLERK

**Docket Number** CV 16-6067238-S

**Case Name** George Soucie' A CT. State Marshal v. Hartford Parking Authority

**Memorandum of Decision dated** 12-9-16

**File Sealed:** **yes**_____ **no** X

**Memo Sealed:** **yes**_____ **no** X

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Legal Terms
Comments

**HHD-CV16-6067238-S** SOUCIE, GEORGE, A CONNECTICUT STATE MARSHAL v. HARTFORD PARKING AUTHORITY

**Prefix:** HD3 **Case Type:** M90 **File Date:** 04/05/2016 **Return Date:** 04/12/2016

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help

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**Information Updated as of:** 12/09/2016

## Case Information

**Case Type:** M90 - Misc - All other
**Court Location:** HARTFORD JD
**List Type:** No List Type
**Trial List Claim:**
**Last Action Date:** 08/23/2016 (The "last action date" is the date the information was entered in the system)

## Disposition Information

**Disposition Date:**
**Disposition:**
**Judge or Magistrate:**

## Party & Appearance Information

| Party | | No Fee Party | Category |
|---|---|---|---|
| P-01 | GEORGE SOUCIE A CONNECTICUT STATE MARSHAL<br>**Attorney:** NOBLE III EDWARD S LAW OFFICE OF LLC (435058) File Date: 04/05/2016<br>P.O. BOX 484<br>EAST HADDAM, CT 06423 | | Plaintiff |
| D-01 | HARTFORD PARKING AUTHORITY<br>**Attorney:** HARTFORD CORPORATION COUNSEL (026795) File Date: 04/12/2016<br>550 MAIN STREET<br>HARTFORD, CT 06103 | | Defendant |

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## Motions / Pleadings / Documents / Case Status

| Entry No | File Date | Filed By | Description | Arguable |
|---|---|---|---|---|
| | 04/12/2016 | D | APPEARANCE<br>Appearance | |
| 100.30 | 04/05/2016 | P | SUMMONS | No |
| 100.31 | 04/05/2016 | P | COMPLAINT | No |
| 100.32 | 04/05/2016 | P | RETURN OF SERVICE | No |
| 101.00 | 05/16/2016 | P | MOTION FOR DEFAULT FOR NON | No |